

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ARNEL KNIGHT,

Defendant.

CASE NO. 8:09CR411

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 57). The government has adopted the PSR. (Filing No. 60.) As an alternative to her objections to the PSR, the Defendant filed a motion for deviation (Filing No. 58). See “Order on Sentencing Schedule,” ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the quantity of controlled substance and base offense level attributed to the Defendant in ¶ 29. The plea agreement recommends a base offense level of 24 based on a quantity of at least 5 but less than 20 grams of a mixture or substance containing cocaine base. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 24. The Defendant's guideline sentence then becomes the mandatory minimum term of 60 months. Therefore, the motion for deviation is moot and will be denied without prejudice.

IT IS ORDERED:

1. The Court's tentative findings are that the Defendant's objections (Filing No. 57) to the PSR are granted;

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for deviation (Filing No. 58) is denied without prejudice.

DATED this 17th day of May, 2010.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge